

AMENDED IN ASSEMBLY MAY 1, 2014

AMENDED IN ASSEMBLY MARCH 26, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1751

Introduced by Assembly Member Bloom

February 14, 2014

An act to amend Section 1771.8 of the Health and Safety Code, relating to continuing care.

LEGISLATIVE COUNSEL'S DIGEST

AB 1751, as amended, Bloom. Continuing care retirement communities.

(1) Existing law provides for the regulation by the State Department of Social Services of activities relating to continuing care contracts that govern care provided to an elderly resident in a continuing care retirement community for the duration of the resident's life or a term in excess of one year. Existing law declares the Legislature's finding that the residents of continuing care retirement communities have a unique and valuable perspective on the operations of, and services provided in, the community in which they live and should have input into decisions made by the provider.

Existing law requires every continuing care retirement community provider to make available to the resident association or its governing body, or if neither exists, to a committee of residents, a financial statement of activities for that facility comparing actual costs to budgeted costs broken down by expense category, not less than semiannually. Existing law also requires a provider to provide a copy of the annual

report at a central and conspicuous location in the community. A violation of these provisions is punishable as a misdemeanor.

This bill would instead require the financial statement to be provided not less than quarterly, and would require it to include a written explanation of all significant budget variances. This bill would additionally require a provider to make a copy of the annual report available on its Internet Web site. By expanding the scope of a crime, this bill would impose a state-mandated local program.

(2) Existing law requires the governing body of a provider *that is not part of a multifacility organization with more than one continuing care retirement community in the state* to accept at least one resident of the continuing care retirement community it operates to participate as a nonvoting resident representative to the governing body ~~or one in 3 of its communities.~~ *body. Existing law requires the governing body of a multifacility organization to elect either to have at least one nonvoting resident representative to the provider's governing body for each California-based continuing care retirement community the provider operates or to have a resident-elected committee composed of representatives of the residents of each California-based continuing care retirement community that the provider operates select or nominate at least one nonvoting resident representative to the provider's governing body for every 3 California-based continuing care retirement communities or fraction thereof that the provider operates.*

This bill would additionally require the governing body *of all providers* to accept ~~at least 3 residents of one resident, or 2 residents for a governing body with 21 or more members, from the continuing care retirement community or communities it operates or a number of residents equal to 25% of the members of the provider's governing body, whichever is greater,~~ to participate as voting members of the provider's governing body, and would make other technical and conforming changes. *The bill would require a resident member to be nominated to participate on the provider's governing body by the resident association or if a resident association does not exist, a committee of residents, and would authorize the resident association or committee of residents to nominate multiple nominees from which the provider's governing body may approve a resident member. If the governing body disapproves of the resident association's nominations, the bill would require the resident association or committee of residents to nominate additional resident members until the vacancy is filled.*

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1771.8 of the Health and Safety Code is
2 amended to read:

3 1771.8. (a) The Legislature finds and declares all of the
4 following:

5 (1) The residents of continuing care retirement communities
6 have a unique and valuable perspective on the operations of, and
7 services provided in, the community in which they live.

8 (2) Resident input into decisions made by the provider is an
9 important factor in creating an environment of cooperation,
10 reducing conflict, and ensuring timely response and resolution to
11 issues that may arise.

12 (3) Continuing care retirement communities are strengthened
13 when residents know that their views are heard and respected.

14 (b) The Legislature encourages continuing care retirement
15 communities to exceed the minimum resident participation
16 requirements established by this section by, among other things,
17 the following:

18 (1) Encouraging residents to form a resident association, and
19 assisting the residents, the resident association, and its governing
20 body to keep informed about the operation of the continuing care
21 retirement community.

22 (2) Encouraging residents of a continuing care retirement
23 community or their elected representatives to select residents to
24 participate as members of the governing body of the provider.

25 (3) Quickly and fairly resolving any dispute, claim, or grievance
26 arising between a resident and the continuing care retirement
27 community.

28 (c) The governing body of a provider, or the designated
29 representative of the provider, shall hold, at a minimum,
30 semiannual meetings with the residents of the continuing care

1 retirement community, or the resident association or its governing
2 body, for the purpose of the free discussion of subjects including,
3 but not limited to, income, expenditures, and financial trends and
4 issues as they apply to the continuing care retirement community
5 and proposed changes in policies, programs, and services. This
6 section does not preclude a provider from taking action or making
7 a decision at any time, without regard to the meetings required
8 under this subdivision.

9 (d) At least 30 days prior to the implementation of an increase
10 in the monthly care fee, the designated representative of the
11 provider shall convene a meeting, to which all residents shall be
12 invited, for the purpose of discussing the reasons for the increase,
13 the basis for determining the amount of the increase, and the data
14 used for calculating the increase. This meeting may coincide with
15 the semiannual meetings required in subdivision (c). At least 14
16 days prior to the meeting to discuss an increase in the monthly
17 care fee, the provider shall make available to each resident or
18 resident household comparative data showing the budget for the
19 upcoming year, the current year's budget, and actual and projected
20 expenses for the current year, and a copy shall be posted in a
21 conspicuous location at each facility.

22 (e) The governing body of a provider or the designated
23 representative of the provider shall provide residents with at least
24 14 days' advance notice of each meeting provided for in
25 subdivisions (c) and (d), and shall permit residents attending the
26 meeting to present issues orally and in writing. The governing
27 body of a provider or the designated representative of the provider
28 shall post the notice of, and the agenda for, the meeting in a
29 conspicuous place in the continuing care retirement community
30 at least 14 days prior to the meeting. The governing body of a
31 provider or the designated representative of the provider shall make
32 available to residents of the continuing care retirement community
33 upon request the agenda and accompanying materials at least seven
34 days prior to the meeting.

35 (f) A provider shall make available to the resident association
36 or its governing body, or if neither exists, to a committee of
37 residents, a financial statement of activities for that facility
38 comparing actual costs to budgeted costs broken down by expense
39 category, not less than quarterly, with a written explanation of all
40 significant budget variances, and shall consult with the resident

1 association or its governing body, or, if neither exists, with a
2 committee of residents, during the annual budget planning process.
3 The effectiveness of consultations during the annual budget
4 planning process shall be evaluated at a minimum every two years
5 by the continuing care retirement community administration. The
6 evaluation, including any policies adopted relating to cooperation
7 with residents, shall be made available to the resident association
8 or its governing body, or, if neither exists, to a committee of
9 residents at least 14 days prior to the next semiannual meeting of
10 residents and the provider's governing body provided for in
11 subdivision (c), and a copy of the evaluation shall be posted in a
12 conspicuous location at each facility.

13 (g) A provider shall, within 10 days after the annual report
14 required pursuant to Section 1790 is submitted to the department,
15 provide, at a central and conspicuous location in the community
16 and in a conspicuous location on the provider's Internet Web site,
17 a copy of the annual report, including the multifacility statement
18 of activities and a copy of the annual audited financial statement,
19 but excluding personal confidential information.

20 (h) A provider shall maintain, as public information, available
21 upon request to residents, prospective residents, and the public,
22 minutes of the meetings held by the provider's governing body
23 and shall retain these records for at least three years from the date
24 the records were filed or issued.

25 (i) The governing body of a provider that is not part of a
26 multifacility organization with more than one continuing care
27 retirement community in the state shall accept both of the
28 following:

29 (1) At least one resident of the continuing care retirement
30 community it operates to participate as a nonvoting resident
31 representative to the provider's governing body.

32 (2) ~~At least three residents~~ *one resident, or two residents for a*
33 *governing body with 21 or more members*, of the continuing care
34 retirement community it operates ~~or a number of residents equal~~
35 ~~to 25 percent of the members of the provider's governing body,~~
36 ~~whichever is greater,~~ *to participate as a voting member*
37 *of the provider's governing body. A provider's governing body*
38 *shall not be required to meet the requirements of this paragraph*
39 *until there is a vacancy on the provider's governing body or upon*
40 *the next regularly scheduled selection of the provider's governing*

body occurring on or after January 1, 2015. A resident member shall perform his or her duties in a manner that complies with the standards of conduct and fiduciary duties of all other members of the governing board.

(j) In a multifacility organization having more than one continuing care retirement community in the state, the governing body of the multifacility organization shall do both of the following:

(1) Elect either to have at least one nonvoting resident representative to the provider's governing body for each California-based continuing care retirement community the provider operates or to have a resident-elected committee composed of representatives of the residents of each California-based continuing care retirement community that the provider operates select or nominate at least one nonvoting resident representative to the provider's governing body for every three California-based continuing care retirement communities or fraction thereof that the provider operates. If a multifacility organization elects to have one representative for every three communities that the provider operates, the provider shall provide to the president of the residents association of each of the communities that do not have a resident representative, the same notice of meetings, packets, minutes, and other materials as the resident representative. At the reasonable discretion of the provider, information related to litigation, personnel, competitive advantage, or confidential information that is not appropriate to disclose, may be withheld.

(2) (A) ~~Elect to have at least three residents~~ *one resident, or two residents for a governing body with 21 or more members, from any of the continuing care retirement communities it operates or a number of residents equal to 25 percent of the members of the provider's governing body, whichever is greater, to participate as voting members of the provider's governing body. If a provider's governing body shall not be required to meet the requirements of this subparagraph until there is a vacancy on the provider's governing body or upon the next regularly scheduled selection of the provider's governing body occurring on or after January 1, 2015. A resident member shall perform his or her duties in a manner that complies with the standards of conduct and fiduciary duties of all other members of the governing board.*

1 (B) If there are communities that do not have a resident from
2 the community as a voting member of the provider's governing
3 body, the provider shall provide to the president of the residents
4 association of each of those communities, the same notice of
5 meetings, packets, minutes, and other materials as the resident
6 voting members. At the reasonable discretion of the provider,
7 information related to litigation, personnel, competitive advantage,
8 or confidential information that is not appropriate to disclose, may
9 be withheld.

10 (k) In order to encourage innovative and alternative models of
11 resident involvement, residents selected pursuant to *paragraph*
12 *(1) of subdivision (i) or paragraph (1) of subdivision (j)* to
13 participate as a resident representative ~~or member~~ to the provider's
14 governing body may, at the option of the resident association, be
15 selected in any one of the following ways:

16 (1) By a majority vote of the resident association of a provider
17 or by a majority vote of a resident-elected committee of residents
18 of a multifacility organization.

19 (2) If no resident association exists, any resident may organize
20 a meeting of the majority of the residents of the continuing care
21 retirement community to select or nominate residents to represent
22 them on the governing body.

23 (3) Any other method designated by the resident association.

24 (l) *A resident member of the provider's governing body selected*
25 *pursuant to paragraph (2) of subdivision (i) or paragraph (2) of*
26 *subdivision (j) shall be nominated to participate on the provider's*
27 *governing body by the resident association or if a resident*
28 *association does not exist, a committee of residents. The resident*
29 *association or committee of residents may nominate multiple*
30 *nominees from which the provider's governing body may approve*
31 *a resident member. If the governing body disapproves of the*
32 *resident association's nominations, the resident association or the*
33 *committee of residents shall nominate additional resident members*
34 *for the governing body's approval or disapproval until the vacancy*
35 *is filled.*

36 (t)

37 (m) The resident association, or organizing resident, or in the
38 case of a multifacility organization, the resident-elected committee
39 of residents, shall give residents of the continuing care retirement
40 community at least 30 days' advance notice of the meeting to select

1 a resident representative and *resident members of the governing*
2 *body* and shall post the notice in a conspicuous place at the
3 continuing care retirement community.

4 ~~(m)~~

5 (n) (1) Except as provided in subdivision~~(n)~~; (o), resident
6 representatives~~and members~~ shall receive the same notice of
7 meetings, packets, minutes, and other materials as~~other~~ members
8 of the provider's governing body and shall be permitted to attend,
9 speak, and participate in all meetings of the governing body.

10 (2) Resident representatives~~and members~~ may share information
11 from meetings with other residents, unless the information is
12 confidential or doing so would violate fiduciary duties to the
13 provider. A resident representative shall be permitted to attend
14 meetings of the governing body committee or committees that
15 review the annual budget of the facility or facilities and recommend
16 increases in monthly care fees. The resident representative shall
17 receive the same notice of meetings, information, packets, minutes,
18 and other materials as committee members, and shall be permitted
19 to attend, speak, and participate in the committee meetings.
20 Resident representatives~~and members~~ shall perform their duties
21 in good faith and with such care, including reasonable inquiry, as
22 an ordinarily prudent person in a like position would use under
23 similar circumstances.

24 ~~(n)~~

25 (o) Notwithstanding subdivision~~(m)~~; (n), the provider's
26 governing body may exclude resident representatives from its
27 executive sessions and from receiving meeting materials to be
28 discussed during executive session. However, resident
29 representatives shall be included in executive sessions and shall
30 receive all meeting materials to be discussed during executive
31 sessions related to discussions of the annual budgets, increases in
32 monthly care fees, indebtedness, and expansion of new and existing
33 continuing care retirement communities.

34 ~~(o)~~

35 (p) The provider shall pay all reasonable travel costs for resident
36 representatives and *resident members of the governing body*.

37 ~~(p)~~

38 (q) The provider shall disclose in writing the extent of resident
39 involvement with the governing body to prospective residents.

40 ~~(q)~~

1 (r) A provider is not prohibited from exceeding the minimum
2 resident participation requirements of this section by, for example,
3 having more resident meetings or more resident representatives
4 or *resident members of the governing body* to the provider's
5 governing body than required or by having one or more residents
6 on the provider's governing body who are selected with the active
7 involvement of residents.

8 SEC. 2. No reimbursement is required by this act pursuant to
9 Section 6 of Article XIII B of the California Constitution because
10 the only costs that may be incurred by a local agency or school
11 district will be incurred because this act creates a new crime or
12 infraction, eliminates a crime or infraction, or changes the penalty
13 for a crime or infraction, within the meaning of Section 17556 of
14 the Government Code, or changes the definition of a crime within
15 the meaning of Section 6 of Article XIII B of the California
16 Constitution.